

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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5 - FEB 2004
RECKITT BENCKISER
GROUP PATENTS DEPT

TO: JCM
TO: ICH 5/2
CASE NUMBER
1099 SP 1235
WRITTEN OPINION
(PCT-Rule 66)
KH
KH
Date of mailing
(day/month/year) 03.02.2004

Please bring file

Applicant's or agent's file reference

International application No.
PCT/GB 03/01444

International filing date (day/month/year)
02.04.2003

Priority date (day/month/year)
02.04.2002

International Patent Classification (IPC) or both national classification and IPC
A61L9/12, A61L9/12

Applicant
RECKITT BENCKISER (UK) LIMITED et al.

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

I ☒ Basis of the opinion

II ☐ Priority

III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

IV ☐ Lack of unity of invention

V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

VI ☐ Certain documents cited

VII ☐ Certain defects in the international application

VIII ☐ Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is:

Name and mailing address of the international preliminary examining authority:

European Patent Office
D-80298 Munich
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Authorized Officer

Formalities officer (incl. extension of time limits)
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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-7 as originally filed

Claims, Numbers

1-13 as originally filed

Drawings, Sheets

1/3-3/3 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 13

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the said claims Nos. 13

2. A written opinion cannot be drawn due to the failure of the nucleotide and/or amino acid sequence listing to comply with the Standard provided for in Annex C of the Administrative Instructions:

- ☐ the written form has not been furnished or does not comply with the Standard.
- ☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1,2,4,6-12
Inventive step (IS)	Claims	1-12
Industrial applicability (IA)	Claims	

2. Citations and explanations

see separate sheet

D1: WO-A-02 078750
D2: US-A-5 788 155
D3: WO-A-00 24 434
D4: US-A-S 419 879

1. Independent claim 13 aims at defining a device with reference to the drawings accompanying the application. No specific structural features are mentioned. This renders the subject-matter for which protection is sought completely vague and unclear (Art. 6 and Rule 6.2(a) PCT), so that, concerning this claim, no meaningful search was possible (Art. 17(2)b PCT). According to Rule 66.1(e) PCT claims relating to unsearched subject-matter need not be examined.
2. The subject-matter of claims 1, 2, 4 and 6 to 12 of the present application is already disclosed in document D1 (see eg claim 1, figures and page 8, lines 18 to page 9, line 6), an earlier application of the applicants. Consequently, according to Art. 8(2)a PCT in context with Art. 4C(4) Paris Convention, only the filing date 02/04/03 of the present application can be acknowledged as priority date for the subject-matter of these claims, so that document D1 is novelty-destroying under Art. 33(2) PCI for these claims.
3. Document D2 discloses an air freshening or air purifying device comprising a container 20 (reference signs according to D2) which may be thermoformed from a plastic material (D2, column 3, lines 31 to 33) and which has an open side defining a surface suitable for receiving a gel 14 (see also D2, column 4, lines 13, 14). The surface has therein a plurality of projections 19 defining recesses for retaining the gel. The device further comprises a lower end for supporting the container such that the gel receiving surface is in a substantially vertical orientation (the device of D2 can be arranged such that seam 21 forms the top). Thus, document D2 is novelty-destroying for the subject-matter of claim 1, so that this claim does not meet the requirements of Art. 33(2) PCT with regard to D2.
4. Document D3 discloses an air freshening or air purifying device comprising a container 1 (reference signs according to D3) which may be thermoformed

from a plastic material (D3, page 14, lines 5 to 12) and which has an open side defining a surface suitable for receiving a gel 3 (see also D3, page 5, lines 30 to 33). The surface has therein a plurality of projections defining recesses 2 for retaining the gel.

The subject-matter of claim 1 differs from what is disclosed in D3 in that a base is defined at one end of the container supporting the container such that the gel receiving surface is in a substantially vertical orientation.

However, D3 (page 3, lines 12 to 20) mentions the possibility of forming gel retaining recesses "in more of the faces or surfaces of the support designed to be exposed to the air", in which case at least one gel receiving surface is in a substantially vertical orientation. Furthermore, it is well known in the art (see eg D4, column 6, lines 18 to 24) that a container with internal projections can even be reversed without spilling a gel contained therein.

Consequently, the provision of a base allowing the erected arrangement of the device disclosed in D3 so that the gel receiving surface is in a substantially vertical orientation cannot be considered to involve an inventive step. Claim 1 does not meet the requirements of Art. 33(3) PCT with regard to documents D3 and D4.

5. In the light of the cited documents and the general knowledge of the skilled person and in view of the routine proceedings of a responsible engineer the dependent claims seem to contain nothing else than evident features. Thus, claims 2 to 12 do not meet the requirement of Art. 33(2) or (3) PCT.

Our Ref: 10995P1 WO/JCM.lm

Date: 2 June 2004

BY FACSIMILE & POST

European Patent Office
International Preliminary Examination Authority
D-80298
Munich
GERMANY

Dear Sirs

International Patent Application No. PCT/GB03/01444
Reckitt Benckiser (UK) Limited

I write in response to the Written Opinion dated 3 February 2004 issued in connection with the above application. The Examiner is thanked for granting a one month extension to reply to the Written Opinion.

I enclose herewith in triplicate amended pages nos. 8, 9 and 10 to replace existing pages nos. 8 and 9 on file. For the assistance of the Examiner I also enclose pages 8 and 9 showing the proposed amendments in manuscript.

Claim 1 has been amended to include the limitation that the container and base are both thermoformed from a lightweight plastics material. Basis for this amendment can be found at page 2, lines 20-21 and page 7, lines 9 to 11. The Examiners attention is also drawn to the fact that in all embodiments shown in Figures 1 to 4, both the container and the base are shown formed from lightweight plastics material.

Claims 2 and 3 have been corrected to remove the redundant reference to the supporting means.

In the Opinion the Examiner indicated that independent claim 13 was not allowable and this claim has been deleted from the amended claims as filed.

With regard to the objection that D1 is novelty destroying, the amended claims make it clear that all components of the device are thermoformed from a lightweight plastic material. This includes both the container itself and the base located at a lower end of the container for supporting the container.

In D1, the container 11 is actually made from translucent and/or coloured glass or another rigid impermeable material. Only the refill container 15 is made from a plastic material which is thermoformed. Furthermore, if the refill container 15 is deemed to be equivalent to the container of claim 1, as this is the only thermoformed component of D1, then the container 11 must be considered to comprise the base. Since this is not from a thermoformed lightweight plastic material, all the features of claim 1 are not disclosed in D1 and amended claim 1 is therefore novel over D1. The other claims recited (although renumbered following the amendments to the claims) are also novel as being dependent on a novel claim.

The Examiner will also note that new independent claims 4 and 5 have been added, which are a combination of claims 1 + 2 and 1+3 respectively. It is also submitted, for the same reasons, that these are also novel over D1.

The Examiner has also indicated that Document D2 is novelty destroying for claim 1. I respectfully submit that this is not correct.

Firstly, D2 describes a product which has a thin membrane which covers the tray (see column 2, lines 37 to 42). It therefore does not describe a container having an open side. The container in D2 is always closed by this membrane.

Furthermore, the Examiner has suggested and that the device has a lower end for supporting the container, if the seam 21 is considered to form the top. However this is somewhat stretching the facts as the device of D2 is clearly intended to use laying flat on a surface, as shown in every single drawing in the specification. Furthermore, there is no hint or suggestion that it could be placed on its end. Even if it was, there is no base as such located at the lower end of the container which provides support. Indeed, it is highly likely that if one attempted to stand this device up on its end, the two trays would merely fall open as there are no means for holding them together.

Thus, I, submit that the Examiner is incorrect in his findings that the device contains a container and a base which supports the container when the base is located at the lower end of the container. For these reasons it is submitted that amended claim 1 is novel over D2 for the same reasons independent claims 4 and 5 are also considered to be novel over D2.

With regard to D3, the Examiner has incorrectly surmised that this discloses a container which is thermoformed from a plastics material. The text refers to manufacturing the solid, one piece-block, which forms the device of D3, by casting, moulding or injection moulding or another suitable method. It does not refer to thermoforming and the Examiner should note that thermoforming would not be suitable to form the solid casing or housing of D3. Throughout D3 it emphasises that

CLAIMS:

1. An air freshening or purifying device comprising a container, the container having an open side defining a gel
5 receiving surface, which surface has therein a plurality of projections defining recesses therebetween for retaining a gel, said device further comprising a base located at a lower end of the container for supporting the container such that the gel receiving surface is in a substantially
10 vertical orientation, wherein the container and base are both thermoformed from a lightweight plastic material.
2. An air freshening device or purifying device as claimed in claim 1 in which the base is formed with a slot for
15 receiving at least a portion of the perimeter of the container.
3. An air freshening or purifying device as claimed in claim 1 in which the base is integrally formed with the
20 container.
4. An air freshening or purifying device comprising a container, the container having an open side defining a gel
receiving surface, which surface has therein a plurality of
25 projections defining recesses therebetween for retaining a gel, said device further comprising a base formed with a slot for receiving at least a portion of a lower end of the perimeter of the container for supporting the container such that the gel receiving surface is in a substantially
30 vertical orientation, wherein the container and base are both thermoformed from a lightweight plastic material.

5. An air freshening or purifying device comprising a container, the container having an open side defining a gel receiving surface, which surface has therein a plurality of projections defining recesses therebetween for retaining a gel, said device further comprising a base located at and integrally formed with a lower end of the container for supporting the container such that the gel receiving surface is in a substantially vertical orientation, wherein the container and base are both thermoformed from a lightweight plastic material.

6. An air freshening or purifying device as claimed in any one of the preceding claims in which the container is formed with a circumferential rim.

7. An air freshening or purifying device as claimed in claim 6 in which the rim has a width greater than the depth of the gel receiving surface.

8. An air freshening or purifying device as claimed in any one of the preceding claims further comprising a removable cover applied to the container to cover the gel receiving surface.

9. An air freshening or purifying device as claimed in claim 6 in which the removable cover is made from a foil material which is heat sealed to the container.

10. An air freshening or purifying device as claimed in claim 8 in which the removable cover is made from a plastic laminate which is heat sealed to the container.

11. An air freshening or purifying device as claimed in any one of the preceding claims in which the container is filled with a gel composition.

5 12. An air freshening or purifying device as claimed in claim 10 in which the gel composition is a fragrance.

13. An air freshening or purifying device as claimed in claim 10 in which the gel composition is an insecticide.

10

14. An air freshening or purifying device as claimed in claim 10 in which the gel composition is an air purifying composition.

15 551867; TAB; TJ

CLAIMS:

1. An air freshening or purifying device comprising a container ~~which is thermoformed from a plastic material~~,
5 the container having an open side defining a gel receiving surface, which surface has therein a plurality of projections defining recesses therebetween for retaining a gel, said device further comprising a base located at a lower end of the container for supporting the container
10 such that the gel receiving surface is in a substantially vertical orientation, *wherein the container and base are both thermoformed from a lightweight plastic material*
2. An air freshening device or purifying device as claimed in claim 1 in which the ~~supporting means comprise a~~
15 ~~separate base~~ ^{is formed with} having a slot for receiving at least a portion of the perimeter of the container.
3. An air freshening or purifying device as claimed in claim 1 in which the ~~supporting means comprise a base~~ *is*
20 ~~section of and~~ integrally formed with the container.
> New claim 4
> New claim 5
64. An air freshening or purifying device as claimed in any one of the preceding claims in which the container is formed with a circumferential rim.
- 25 78. An air freshening or purifying device as claimed in claim 6 in which the rim has a width greater than the depth of the gel receiving surface.
- 30 88. An air freshening or purifying device as claimed in any one of the preceding claims further comprising a

removable cover applied to the container to cover the gel receiving surface.

9/1. An air freshening or purifying device as claimed in
5 claim ~~4~~⁶ in which the removable cover is made from a foil material which is heat sealed to the container.

10/8. An air freshening or purifying device as claimed in
claim ~~8~~⁸ in which the removable cover is made from a plastic
10 laminate which is heat sealed to the container.

11/8. An air freshening or purifying device as claimed in
any one of the preceding claims in which the container is
filled with a gel composition.

15

12/10. An air freshening or purifying device as claimed in
claim ~~8~~¹⁰ in which the gel composition is a fragrance.

13/11. An air freshening or purifying device as claimed in
20 claim ~~8~~¹⁰ in which the gel composition is an insecticide.

14/12. An air freshening or purifying device as claimed in
claim ~~8~~¹⁰ in which the gel composition is an air purifying
composition.

25

~~13. An air freshening or purifying device substantially as
hereinbefore described with reference to and as shown in
the accompanying drawings.~~